

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PETER LINDNER,

Plaintiff

-against-

COURT SECURITY OFFICER (CSO) NEWELL,
CSO MUSCHITIELLO, CSO JOHN DOE #1, CSO
JOHN DOE #2, 2ND CIRCUIT COURT OF
APPEALS CLERK MARGARET LAIN,
ASSISTANT US MARSHAL (USM) JAMES
HOWARD , USM BRIAN MURPHY, USM BETTY
ANN PASCARELLA, WITNESS SECURITY S.
JONES, CONGRESSIONAL AFFAIRS CHIEF D.
DISRUD, US ATTORNEY PREET BHARARA,
USM JOSEPH R. GUCCIONE,

Defendants

Civil Action No. 11 cv 08365 (AJN-MHD)

PLAINTIFF AFFIDAVIT WITH NOTARY
FOR SEALED COURT HEARING SINCE
USMS JANICE TATE DID NOT CHECK
WITH USMS OFFICE OF
INVESTIGATIONS, WHICH MAY SHOW
FALSE DECLARATION OF USMS
DOCUMENT 40 AND 57

Monday, September 24, 2012 2:48 PM

1) Affidavit Certification	2
4) The point of this affidavit:.....	2
6) Update: While drafting this affidavit over a 6 hour period, I got and hereby oppose Akal and 2 CSO 'Memo of Law in further support of their motion to dismiss'	3
9) Conversation by phone 10 am Sep 24, 2012 of self (Lindner) with Janice Tate USMS	3
19) Why both USMS GC Auerbach and US Attorney Harwood knew of Sep 2010 letters to USMS 4	
22) USMS and US Attorney do not know with right hand what left hand is doing.....	7
26) The Sep 24 2012 filing of Akal and 2 CSOs by Littler as Document 59	7
39) Summary and request for sealed Court Hearing under oath.....	12
Sworn and notarized.....	13
Attachment 1: Letter from Lindner to Ms. Janice Tate of USMS of Monday, September 24, 2012	14
Attachment 2: Letter of 9/9/2012 4:22 PM from Lindner to Harwood indicating possibly perjury by USMS GC Auerbach	16
Attachment 3: Lindner writes CM/ECF Help Desk Sep 12, 2012 about unable to file electronically	18
Attachment 4: Fax showing handwritten note that Lindner unable to file via CM/ECF	19
Attachment 5: Letter to DOJ of Sunday, August 29, 2010 to Tony West, Asst Atty Genl, Civil Division	20
Attachment 6: Scan of Notary Seal & Signature	23

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PETER LINDNER,

Plaintiff

-against-

COURT SECURITY OFFICER (CSO) NEWELL,
CSO MUSCHITIELLO, CSO JOHN DOE #1, CSO
JOHN DOE #2, 2ND CIRCUIT COURT OF
APPEALS CLERK MARGARET LAIN,
ASSISTANT US MARSHAL (USM) JAMES
HOWARD , USM BRIAN MURPHY, USM BETTY
ANN PASCARELLA, WITNESS SECURITY S.
JONES, CONGRESSIONAL AFFAIRS CHIEF D.
DISRUD, US ATTORNEY PREET BHARARA,
USM JOSEPH R. GUCCIONE,

Defendants

Civil Action No. 11 cv 08365 (AJN-MHD)

PLAINTIFF AFFIDAVIT WITH NOTARY
FOR SEALED COURT HEARING SINCE
USMS JANICE TATE DID NOT CHECK
WITH USMS OFFICE OF
INVESTIGATIONS, WHICH MAY SHOW
FALSE DECLARATION OF USMS
DOCUMENT 40 AND 57

Monday, September 24, 2012 2:48 PM

STATE OF NEW YORK)

: SS.:

COUNTY OF NEW YORK)

PETER LINDNER, being duly sworn, says:

1) Affidavit Certification

2) I am the Plaintiff in this action.

3) I make this affidavit on personal knowledge, with the help of my computer files, and to the best of my recollection.

4) The point of this affidavit:

- a) that both US Attorney Harwood and USMS General Counsel Auerbach knew or could have known that documents 40 and 57 made under the penalty of perjury were misleading, and
- b) thus were in violation of NY Judiciary §487 on “intent to deceive” any Court in NY State, which is a criminal misdemeanor.

5) I hereby swear (again, I believe) that I did file a complaint (among many) to the US Department of Justice (DOJ) in a timely fashion in August 2010 – some 2 years ago.

- a) The DOJ Office of Inspector General (DOJ OIG) wrote me that they forwarded my Aug2010 complaint to the FBI and the USMS
- b) That I followed up in my Wed, Sep 22, 2010 8:51pm letter to the FBI and USMS that additional events had occurred.
- c) That the additional event was the assault of CSO Newell on Friday, August 20, 2010 at the 500 Pearl St Courthouse which houses both the SDNY and the 2nd Circuit Court of Appeals (the event happened in front of the intake window for the 2nd Circuit Court of Appeals)

- d) That I also wrote on Sunday, August 29, 2010 1:15 AM to Mr. Tony West, Assistant Attorney General, Civil Division, about this incident, along with the information I was given by the USMS that USMS Pascarella would neither confirm nor deny that a tape of that incident exists, despite saying that she did review a videotape, and that " Mr. Newell denies his badge made contact with my face. "
- e) Therefore Document 40 and 57 from USMS General Counsel Auerbach under the "penalty of perjury" is misleading and thus perhaps "intent to deceive" any Court in NY State, which is a criminal misdemeanor under NY Judiciary §487, which applies also to Federal Courts located in NY State.
- f) And that US Attorney Harwood knew or could have had a copy of that DOJ OIG letter to the USMS
 - i) perhaps as early as Sep. 9, 2012 4:22 pm (attachment 2) if Harwood had agreed to meet me or
 - ii) definitely by 9/19/2012 when I filed Document 50-1 on page 8 of 17 (see "Figure 2 Adobe PDF "snapshot" of Document #50-1 page 8, Filed Wed, 9/19/2012") showing said letter of DOJ OIG of 9/13/2010. I attach a portion of that document below as ¶(20)b)

6) Update: While drafting this affidavit over a 6 hour period, I got and hereby oppose Akal and 2 CSO 'Memo of Law in further support of their motion to dismiss'

- 7) I received via CM/ECF email notification the Document 59 of Littler, and had not intended to respond prior to getting it, as best I can recollect.
- 8) I believe that Littler's points are invalid, inconsistent, and perhaps betray a sense of guilt for not only refusing to act honorably as the management of CSO's sworn to do the Government's USMS duties as assigned, but also in not faithfully managing the 2 CSO's, being alert to the possibility of them lying to Akal and feloniously to the USMS. I shall deal with this toward the end of this affidavit.

9) Conversation by phone 10 am Sep 24, 2012 of self (Lindner) with Janice Tate USMS

- 10) I certify that I just spoke to Ms. Janice Tate, USMS Office of the General Counsel, whom I sent an email (attached) some 7 minutes earlier. That email of Monday, September 24, 2012 9:52 AM contains 7 attachments, including my filing of Sep2010, and the DOJ OIG letter to USMS of Sep2010 and Aug2011 (which I made a **typo** in my email to Ms. Tate referring to them as Aug2010 when I **meant Aug2011**: "DOJ OIG a few weeks earlier in Sep2010, and a year later in Aug2010[sic]").
- 11) Ms. Tate said she is sending a request to the USMS Office Of Investigations (now Mon, Sep 24, 2012) to see if they have my prior years' letters.
- 12) Ms. Tate said and agreed with me that the FTCA form 95 need not be filled in, as long as I specify the name, date, location and witnesses.
- 13) I asked if I neglected to put in (say) witnesses, they would inform me that they needed that information, and Ms. Tate confirmed that.
- 14) I pointed out to Ms. Tate verbally as she read my email of 7 minutes ago (that had 7 attachments) that in my complaint of two years ago, I did specify the time, date, location and person as (I believe I read part of this from the Wed, Sep 22 2010 8:51 pm letter): "by (CSO) Court Security

Officer Newel [in front of the 2nd Circuit Court of Appeals,] between 3:30pm and 5:15pm on Friday Aug 20, 2010 on the 3rd floor of 500 Pearl St."

- 15) I told Ms. Tate that when one (specifically meaning US Attorney Harwood) asks if a document is filed (specifically with USMS), one does not say, it was not in file X, but rather that one looked everywhere and could not find the document, especially if it was in file Y.
- 16) Ms. Tate would not tell me an approximate time when the USMS Office Of Investigations will reply, even though I said it was urgent, since Your Honor may be deciding as early as today that I supposedly did not file my complaint prior to 2012.
- 17) I strongly protest and hereby swear to that I filed my letter to USMS on Sep 22 2010, to supplement with new information what the DOJ OIG filed some 9 days earlier on Sep 13 2010. The DOJ letter of 9/13/2010 was in reply to my email of 8/13/2010 (a month prior), and my Sep 22, 2010 letter stated that in the interim, specifically that "between 3:30 pm and 5:15 pm on Friday, August 20th, 2010 on the 3rd floor of 500 Pearl St." that "**I hereby file my complaint to you about an Assault and Battery and intimidation** by (CSO) Court Security Officer Newel " – that is pretty specific; here's the quote from my email to Ms Tate of today Mon, Sep 24, 2012:

" **"I hereby file my complaint to you about an Assault and Battery and intimidation** by (CSO) Court Security Officer Newel in front of the 2nd Circuit Court of Appeals, between 3:30pm and 5:15pm on Friday Aug 20, 2010 on the 3rd floor of 500 Pearl St., while I was reporting a series of mail delayed to the 2nd Circuit. "

[letter to FBI, USMS, and Administrative Office of the US Courts, dated "Wednesday, September 22, 2010 8:51 PM"]"

[internal quote marks and **emphasis** in the original letter to Ms. Tate of today 9/24/2012]
- 18) Ms. Tate was a bit testy about whether the USMS General Counsel Auerbach was in charge of the Office Of Investigations, or if they were at the same level.
- 19) **Why both USMS GC Auerbach and US Attorney Harwood knew of Sep 2010 letters to USMS**
- 20) I also, I believe, mentioned that Auerbach stated under the penalty of perjury that my claim was not found. Auerbach restated that in a filing he signed on Thursday, 9/20/2012. In case Mr. Auerbach or US Attorney Harwood doubts that, look at my Document #50 pages 5-6, Filed 9/19/2012, in which
 - a) ¶11a I [Plaintiff pro se Lindner] cite the "DOJ letter of 8/13/2010" and
 - b) ¶11b I [Plaintiff pro se Lindner] cite "my letter Wed, 9/22/2010, 8:51 PM" (see below snapshot captioned Figure 1)

11. I am aghast at the certification under penalty of perjury of Gerald M Auerbach, Esq. that the USMS had not been notified, which is item #5 in Document 40 of 7/16/12. This may well be perjury by the USMS. NY Judiciary §487 on "intent to deceive" any Court in NY State mandates it as a criminal misdemeanor by any lawyer. It also allows treble damages filed under separate civil suit. I hereby ask for such certification of deception by the USMS and its lawyers and the USMS General Counsel's Office, so that I later can get treble damages.
- a. If Mr. Auerbach, Esq. is to be believed (and I doubt his veracity or his capacity to make a knowledgeable decision), then the USMS would have logged the US DOJ letter of 8/13/2010.
 - b. The USMS / he also would have logged my letter of Wed, 9/22/2010, 8:51pm.
 - c. Thus, it occurs to me that the USMS is
 - i. Inadequate in their record keeping
 - ii. Mr. Auerbach is not competent to do a computer search (e.g. misspelling my name)
 - iii. The evidence was tampered with.
 - d. Given that my entire suit would have been "dismissed with prejudice" by US Attorney Harwood had Mr. Auerbach, Esq. been correct, then I think it behooves the Court to ORDER that the USMS cooperate fully in turning over file in any way relevant to me by mentioning me by name (Peter Lindner) or by moniker ("the enemy" or "Mr. Lincoln"), and turn over all evidence of wiretaps and Court files as per FRCP 26, Electronically Stored Information in "native format" (as opposed to Mr. Auerbach's declaration which is **not** searchable), and list documents withheld as "lawyer confidential" with sufficient clarity that they can be gotten by me even though the USMS wishes to keep such lawbreaking evidence secret and under wraps.
 - e. I also request that the US Attorney Harwood, and Akal, and Mr. Auerbach be grilled as to how this occurred, and whether there are additional records that can

Figure 1 [Adobe PDF "snapshot" of Document #50 page 5, Filed Wed, 9/19/2012]

- c) The actual letter is on page 8:

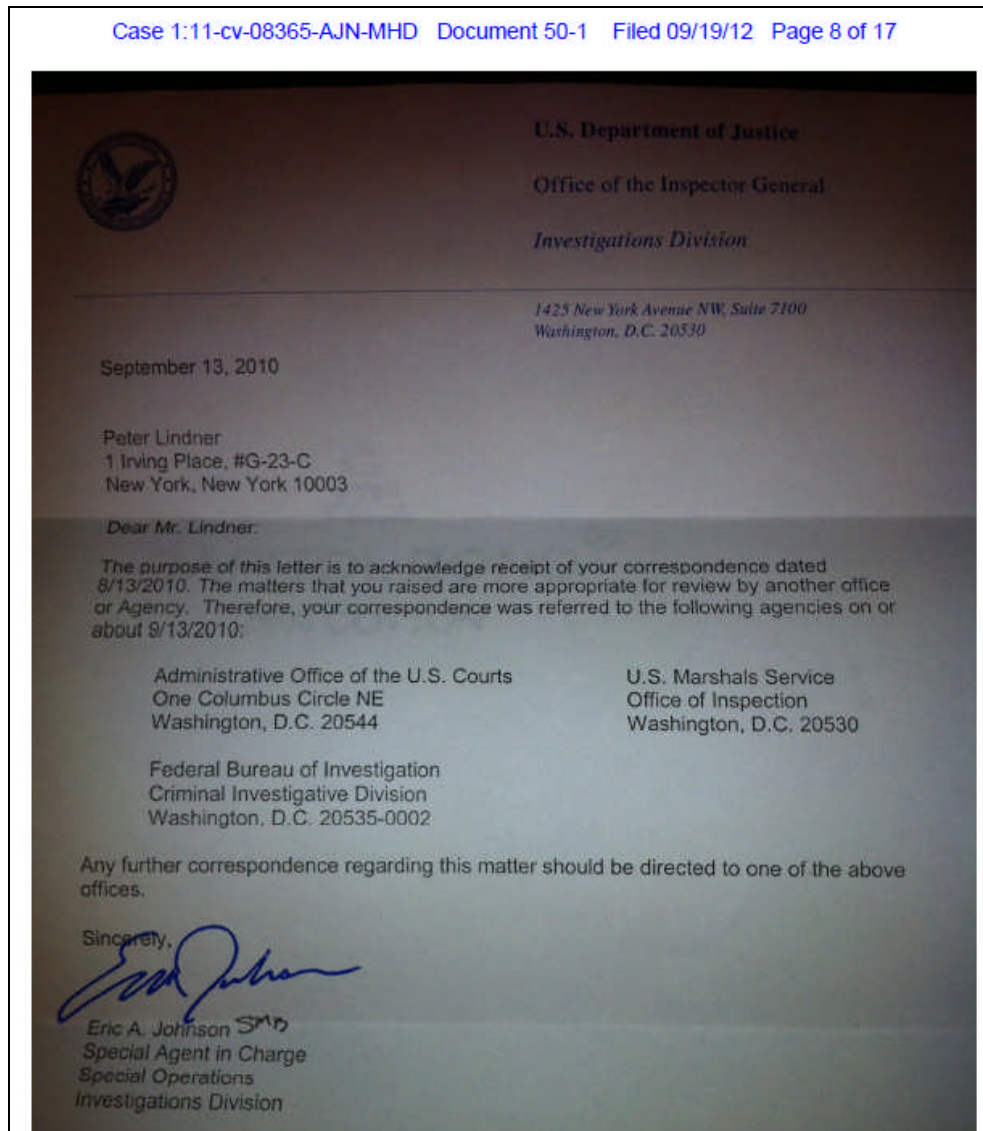


Figure 2 Adobe PDF "snapshot" of Document #50-1 page 8, Filed Wed, 9/19/2012

21) I also note that I raised this issue with US Attorney Harwood in my email to him of "9/9/2012 4:22 PM", where I specifically state " I have proof I filed with DOJ and that they forwarded it to the USMS (US Marshal Service). " This copy of my Sep 2010 mailing to the USMS was in Harwood's hands

a) as early as my email " 9/10/2012 9:04 AM"

From: [Peter Lindner](#)

Sent: Monday, September 10, 2012 9:04 AM

To: [The Honorable USDJ Nathan](#)

Cc: [Christopher \(USANYS\) Harwood](#) ; [Jennie Woltz, Esq](#) ; [Kurt Peterson](#)

Subject: Lindner Response to Defendants' Motions to Dismiss, with Lindner alleging perjury by Defendants

b) and at the latest on Sep 19, 2012, when I finally filed on CM/ECF, which I remind Your Honor that I had "access", but **I for a month could not file electronically due to a CM/ECF Help Desk mistake** in not setting up my CM/ECF profile, as shown

i) in my letter to ECF dated Wed, Sep 12, 2012 10:23 am (attachment 3)

ii) my fax to Your Honor, Harwood & Woltz of Sun Jul 22, 2012 (attachment 4)

22) USMS and US Attorney do not know with right hand what left hand is doing

23) I feel Auerbach's declaration under the penalty of perjury is like a child or a magician saying he has nothing in **his right hand**. And that US Attorney Harwood is like the assistant saying "Yes, there is nothing in **his hand**", when in fact the thing is in **his left hand**. Was the child or magician intending to deceive by specifying his right hand, and/or was the assistant deceptive by generalizing to his hand? I would say that **this is intent to deceive**, which is a tough thing for a layman Pro Se Litigant (which I am) to prove against people who make their living by filing criminal and civil complaints in Courts.

24) But **had there been a conference in good faith** to negotiate / confer with me,

- a) US Attorney Harwood would have asked me for the proof,
- b) when given it¹,
- c) hopefully then asked USMS General Counsel Auerbach to say whether both
 - i) the DOJ Sep2010 and
 - ii) the Lindner Sep2010 letters

sent to " US Marshals Service, Office of Inspection, Washington, DC 20530"
were in the USMS hands, regardless if it were their right or their left hand.

25) I also note that I have sent other timely letters to DOJ, including the one letter of Sunday, August 29, 2010 1:15 AM (attachment 5) which gives the facts of the assault on me by CSO Newell and that the USMS was uncooperative in finding the videotape or securing true testimony by CSO Newell:

" A week ago (8/20/2010) I was assaulted by a Court Security Officer on the area in front of the window of the Clerk of the 2nd Circuit Court of Appeals, 3rd Floor, 500 Pearl St., NYC. I found out this week that this person Mr. Newell is **not** a US Marshal, but a contractor. This week (Friday, August 27, 2010), I was told by US Marshal Betty Ann Pascarella that she did review a video tape, but did not see the incident; however US Marshal Pascarella would neither confirm or deny that a tape exists showing me with the two Court Security Officers. She further said that Mr. Newell denies his badge made contact with my face. The Court Security video tape and a deposition from his colleague should confirm my version, and show that Mr. Newell misled a US Marshal (Pascarella).

I am afraid that the Court Security Officer Newell will get away with the assault and battery upon me, and the video tape recording that Court House incident will get "lost."

[emphasis in the original letter of Sunday, August 29, 2010 1:15 AM]

26) The Sep 24 2012 filing of Akal and 2 CSOs by Littler as Document 59

27) As I stated above in ¶(6), I was eating a late lunch while trying to submit this affidavit to show that USA Harwood and USMS General Counsel Auerbach knew or could have known (misprision of a

¹ I gave a copy of those documents in my

- 1. " Document 50-main Lindner motion request full hearing on Mot to Dismiss and perjury by USMS.pdf"
- 2. " Document 50-1 Plaintiff Affidavit In Addition To Reply Against Motion To Dismiss.pdf" ¶41 which contained the Sep 20, 2010 prior mailing by me to the USMS, and that paragraph was named as:
 - " 41. First two pages of Lindner follow up DOJ letter by writing on 9/22/2010 to USMS and FBI "

felony, as best I know, for not asking a question, when by asking it they would have then known of a felony, so they choose not to ask any questions) of my prior USMS filing in Sep2010. Then I received the Littler Document 59.

28) I am loathe, but forced to, respond to several wrongful statements, but also perhaps I did not state the connection (Document 59, bullet point 3 of 4 on page 7 of 8) of "how Ms. Smith is related to the facts in the current suit, what she might testify, ...".

29) I believe **I already have stated what Ms. Smith might testify:**

- a) That she is a CI for 2 US Government agencies
- b) That she was in SDNY Court for testimony in a criminal case when 2 people accosted her
- c) That the 2 people asked her knowingly to suborn perjury ("perjury") in return
 - i) for benefits if she cooperated
 - ii) penalties unspecified if she did not provide the false testimony
- d) That said "perjury" was that I had made a physical threat against USDJ Sullivan
- e) That Ms Smith had talked to me about USDJ Sullivan who was / is the judge in my case 06cv4751 *Lindner v IBM, et al.*
 - i) I hereby assert and swear that I did talk about USDJ Sullivan
 - ii) I also swear that at no time in my life did I make any reference or attempt to
 - (1) find the home address of USDJ Sullivan, as was asked of me by two US Marshals who came to my home between Xmas and New Years
 - (2) attempt or threaten to attempt to harm USDJ Sullivan in any physical way
 - iii) I also swear that I did and am trying to impeach USDJ Sullivan for violation of 18 USC § 1512(b)(3), when USDJ Sullivan threatened me with Contempt of Court for writing a US federal Law Enforcement Officer (to wit: USMS Guccione) about a possible violation of a federal criminal law (to wit: witness tampering and interfering with communications to USDJ Chief Judge Preska)
- f) Whether or not she informed the Government of this perjury attempt: I do not know the answer, since her communications with her handlers are confidential. Ms. Smith may have
 - i) told her handlers at the government agency and/or
 - ii) the US Attorney who had brought her to SDNY Courthouse to testify in a criminal case (which I think I know, but conceal so as to protect her identity).
- g) That Ms. Smith was barred from giving me a sworn affidavit.
 - i) That the government agency agreed to give a sworn affidavit, but then reneged on that pledge

ii) the government agency / agencies tried to alienate me from her

(1) by calling me "Benedict Arnold" – who is a traitor to the USA

(2) by saying I called her enemies on 20 (or so different times) via using her cell phone's information, subjecting her to possible loss of life

(3) by faking a letter to me that was dictated, but that she did not compose

h) That one or more of the US Government agencies employing her as a CI wanted her to plant "child porn" on my PC

i) So that I would be arrested

ii) So that I could not pursue my looking into

(1) the impeachment of USDJ Sullivan

(2) the involvement of IBM and JacksonLewis in witness tampering for which I have proof of both attempt and successful attempt, by speaking to two of the several witnesses

(3) the violation of FRCP 26 on Electronically Stored Information (ESI) by IBM in withholding the "Janik letter" from Court, even after I brought that email to IBM's attention

iii) So that possibly IBM and other corporate entities could use a corrupt system of US Marshals and SDNY Clerks and CSO's to obstruct justice and deprive me of my federal civil rights

30) I note that in the above paragraph clumsily numbered as ¶(29)h)iii), that I do state

a) 2 Constitutional rights that can be redressed by Your Honor,

i) Obstruction of Justice

ii) Depriving me of my civil rights

(1) I am a gay man, who I allege was thus discriminated against by IBM

(2) In any case, even if my complaint of discrimination was not held to be valid, it was the case that IBM did speak to my prospective employer Wunderman, which IBM denied to the Court, and which the "Janik letter" from 06cv4751 *Lindner v IBM, et al.* proves authentically (and this can be verified by IBM as a genuine email from IBM to me) that their employee stated that the Wunderman hiring manager did ask about me, and that Ron Janik replied.

(3) There was a prior case of Employment Discrimination alleged by me in a group action in *Syverson*², which all I can say under the terms of the agreement is that "the matter has been settled"

b) along with restoring Due Process,

² The case is **Syverson v. International Business Machines Corp.**, 461 F.3d 1147, 1149-50 (9th Cir. 2006)

- c) stopping invasion of privacy
 - i) planting listening devices
 - (1) without a warrant and
 - (2) without cause, and
 - ii) stopping criminal mischief of planting "child porn" on my PC
 - iii) creating fictitious letters / messages from Ms. Smith via paper or dictated in a script almost completely prepared by a US Government Agency that employs Ms. Smith
- d) Suborning perjury of Ms. Smith by bribing or attempting to bribe or both Ms. Smith into saying that I had made a threat against USDJ Sullivan, presumably so I would get arrested for said fabricated threat.

31) On page 2 of Document 59, the 2nd bullet point talking about NY State law barring claims under the 1 year Statute of Limitations ignores several points:

- a) that I filed a letter within days of the Aug 2010 assault of CSO Newell
- b) that I sent that to the USMS, which should have apprised Akal
- c) that a routine report from CSO Newell should have said that
 - i) I alleged that he hit me (whether or not it was true)
 - ii) And that CSO Newell was questioned by the USMS (perhaps in the person of USMS Pascarella), and that Newell denied culpability

32) Thus, the above ¶31) shows both timely filing and sufficient factual evidence of violation of due process and carrying out the Oath taken by the 2 CSO's and perhaps also by Akal.

33) In Document 59, page 3, 7th line from the bottom, Littler says I fault "Akal for not taking steps *after the fact*" [*italics* in the original]. However, even though I am not saying Akal could have prevented CSO Newell from assaulting me (although it could have with better training, and perhaps also with CSO Muschitiello stopping the action of CSO Newell, and dragging him away under arrest), but also Akal could have with timely reporting, and with due diligence, have noted that this case mentioned two of their CSO's, and that an accusation of felonious lying to the USMS should have been followed up so that the matter was settled in 2010, instead of still being litigated in 2012.

- a) CSO Newell could have been dismissed
- b) Akal could have proffered a civil settlement to assuage me, rather than ignore the situation until they were served by subpoena.
- c) These after the fact actions would have fulfilled their oath to the US Government, and ameliorated their violation of said oaths, as well as stopping their (joint) obstruction of justice.

34) This above ¶33) rebuts Akal's page 4 on Document 59 that their CSO's are not "empowered" to make arrests, when I (conjecture upon a great deal of real life evidence / experience) that had I hit

someone and ran, they would have stopped me and "arrested" me, much as a security guard in a public store can arrest and hold a shoplifter even suspected of stealing merchandise.

35) I do not have a copy of the CSO Oath of Office, but

- a) It may be USM-4 for Special Deputation Oath of Office
- b) I could not find the text of that oath, but would request it in Court, so that the ultimate triers of fact (the Jury) would be able to determine if the 2 CSO's violated said Oath
- c) I did find an example of a Texas "Deputation Oath of Office" which says:
 - i) " I will not accept gifts, money or favors from any individual or entity in such a way as to cause or appear
 - ii) to cause leverage to be gained through the position to which I have been appointed and will to the best of my ability
 - iii) preserve, protect and defend the Constitution and Laws of the United States and of this State. "
- d) Under the USMS Oath given to CSO's, assuming that it is similar to the Texas Oath, , the CSO would have violated
 - i) NY State law (§c)iii)), as well as
 - ii) my Constitutional right to due process

36) In document 59, page 6, there are two wrong points:

- a) document 59, page 6, section II, 1st paragraph: "Without properly pleading each element of these claims, Plaintiff's conspiracy and federal claims simply lose all meaning: if no assault or battery occurred, ..." – but I have sworn under oath that such assault and battery did occur, and that CSO Newell apologized for it in front of CSO Muschitiello, and I was told that allegedly Ms. Smith heard that CSO Newell did later confess to hitting me. Given that CSO Newell did confess, or given that CSO Muschitiello could have corroborated my story, then this misrepresentation to Your Honor is again a violation of NY Judiciary §487 on "intent to deceive" any Court in NY State, a criminal misdemeanor.
- b) document 59, page 6, section II, 2nd paragraph: 'the bodily contact described by Plaintiff was not 'harmful or offensive' ". I have two things to rebut it:
 - i) If I had done so to CSO Newell or to a US Marshal, I would have been under arrest for assault and battery.
 - ii) In the case of a person assaulting a CSO as reported on a press release dated August 14, 2008, " RODOLPHE NOGBOU was sentenced this morning by United States District Judge JOHN F. KEENAN in Manhattan federal court to 24 months in prison for assaulting a Court Security Officer working at the Daniel Patrick Moynihan United States Courthouse." And the release noted that the "24 month prison term" was the minimum the Judge felt appropriate:

" When imposing the sentence, Judge KEENAN stated, "The defendant assaulted a federal officer who was charged with the serious responsibility of maintaining security at this Courthouse. The importance of the security duties of CSOs [Court Security Officers] cannot be overstated. . . [T]he job of a CSO is to maintain the security of the building and its perimeter. In particular, the defendant assaulted [the CSO] as he was conducting a search for weapons, any kind of parts of weapons, parts of bombs, or anything that would be suspicious. . . Such behavior cannot be countenanced and it would be an affront to the concept of justice to give a sentence less than I am imposing." In addition to the 24 month prison term, United States District Judge JOHN F. KEENAN ordered NOGBOU to serve a term of 3 years of supervised release."
<http://www.justice.gov/usao/nys/pressreleases/August08/nogbousentencingpr.pdf>

37) On pages 6-7, Littler wrongly asserts that "Plaintiff has demonstrate through his Opposition that he desires: ... [bullet point 2] The ability to hail the CSO Muschitiello and Newell into Court to 'see if [they] were the ones who approached Ms. Smith to suborn perjury....' ... despite failing to produce a shred of evidence connect connecting CSOs ... to the unrelated incident involving the" CI Ms. Smith. [supposedly p. 20 of my Opposition Brief, but I could not find their reference].

- a) First of all: I do not contend I know if those 2 CSOs were the ones who approached Ms. Smith
- b) Secondly: if Akal or Littler knows, then it should say so
- c) Thirdly, I do have a 'shred of evidence', which is that the 2 CSOs Newell and Muschitiello did interfere while I was going for the IBM case at the 2nd Circuit Court of Appeals, and that the Judge for the IBM case was USDJ Sullivan, and that the 2 men who approached Ms. Smith wanted her to perjure herself that she heard me make a (physical) threat against USDJ Sullivan.

38) On pages 6-7, bullet point 3, Littler claims that I failed to show how Ms. Smith is related to the facts in the current suit, and what she might testify to, or how I'd succeed if she did testify. I can answer that by saying that I show how Ms. Smith is connected to the case via the USDJ Sullivan / IBM witness tampering / 18 USC § 1512(b)(3) violation connection. And I show what Ms. Smith might say in ¶ 29). And I'd succeed if she did testify by perhaps corroborating that she is a CI working for the 2 federal agencies whom I named to US Attorney Harwood, and that she did report the attempted suborning of perjury whilst working as a CI at / during / prior to a SDNY trial at the behest of the US Attorney who shook her hand, and perhaps she would recognize and/or point out who the 2 people are who attempted to suborn perjury, and could testify that the agency tried to plant "child porn" on my PC, which would have no reason for that agency to do, except for their association with the USMS (and by connection: the 2 CSO's).

39) Summary and request for sealed Court Hearing under oath

40) Given these circumstances, I humbly request that Your Honor please wait for a response to Ms. Tate's letter which I assume and hope will negate USMS GC Auerbach's penalty of perjury document 40, or in my preference, please convene the "Open Court" hearing with the prime players in attendance in a sealed courtroom with no spectators.

41) In that sealed courtroom, Your Honor or I can then question Mr. Auerbach why he would certify my lack of a prior FTCA claim, which US Attorney Harwood conflated to any administrative claim, when in fact both had proof **prior to Document 57's Sep 20, 2012 Supplemental Declaration** by said Auerbach that in ¶4-¶5, I supposedly "had never submitted any FTCA claims

to the United States Marshal Service", when I did submit a complaint with date, time, location, person on "Wednesday, September 22, 2010 8:51 PM " to:

US Marshals Service
Office of Inspection
Washington, DC 20530

- 42) The sealed hearing must necessarily include Ms. Sally Smith, **her handlers** from both government agencies, the US Attorney who had Ms. Smith testify (or prepare to testify) to the US SDNY Court on the day she was accosted to perjure herself / swear falsely against me. By having a hearing under Oath in Court, a modicum of truth and justice may come out of this series of events stretching over several years, which included possible criminal acts by at least two **different** agencies within DOJ (specifically: the USMS and one or both of the 2 agencies using Confidential Informant Ms. Sally Smith).
- 43) As I have said before, Ms. Smith was approached also by someone known to her in one or both of the 2 agencies which use her as a confidential informant to try to plant "child porn" on my PC, presumably in an effort to stop this suit by any mean necessary, legal or illegal.
- 44) The 2nd US Attorney is not named here, but is known to both me and US Attorney Harwood; the reasons for this are to protect the life of Ms. Sally Smith, which USA Harwood is a bit cavalier, and perhaps criminally negligent in not protecting / redacted information which would lead the criminals to Ms. Smith.
- 45) For the above reasons and in the interest of Justice and Due Process (both of which are Constitutional reasons for my suit), I humbly request that the parties, Mr. Auerbach shall be present via encrypted videoconference call, which I am fairly sure the DOJ has.

Sworn and notarized

By: _____

Dated: New York, NY on _____, September ____, 2012

Peter W. Lindner
Plaintiff, *Pro Se*
1 Irving Place, Apt. G-23-C
New York, New York 10003
Home/ Fax: 212-979-9647
Cell: 917-207-4962
Email: nyc10003@nyc.rr.com

Sworn to before me

This _____ Day of September, 2012

Notary Public
NYC, NY

Attachment 1: Letter from Lindner to Ms. Janice Tate of USMS of Monday, September 24, 2012

(the 7 attachments are listed, rather than being reproduced)
Spaces added to make reading more faithful to original email

Attached to email below were these 7 documents:

Attach: Acknowledgment Sept 2012.pdf; Sept 2010.pdf; August 2011.pdf; Document 50-3.pdf; Document 57 Exhibit by Auerbach Filed 22 Sep2012 Reply by US Atty Harwood to dismiss.pdf; Scan of letter from Lindner to FBI and USMS re CSO Newell assaulting me dated Sep 22 2010.pdf; Document 40 DECLARATION of Gerald Auerbach 16Jul2012.pdf

From: [Peter Lindner](#)

Sent: Monday, September 24, 2012 9:52 AM

To: janice.tate@usdoj.gov

Subject: Miscarriage of justice: previous Complaint Submission of Lindner from Sep 2010, with 2 from DOJ of Sep2010 & Aug2011

Dear Ms. Tate:

Please check your records for the entire USMS to see if the USMS received a letter from me of "Wednesday, September 22, 2010 8:51 PM", reporting my claim of assault by CSO Newell (attached), along with the one from DOJ OIG a few weeks earlier in Sep2010, and a year later in Aug2010 (both attached). DOJ OIG is short for "Office of the Inspector General, Investigations Division".

This is critical, since the US Attorney claims that I never filed prior to July 2012, and USMS Auerbach confirms that under perjury in "Document 40 DECLARATION of Gerald Auerbach 16Jul2012.pdf". Not to put too much pressure on you, that statement from Auerbach is a lie, since I wrote in Sep2010 as did the DOJ OIG, which Auerbach can't find.

I am also in receipt of your letter of July 18, 2012 on the FTCA (Federal Tort Claims Act), which USMS General Counsel Auerbach Enclosed in the attached Document 57, page 20 (of 20).

However, as you can see from the attached DOJ letter of Sep2010 and Aug2011, the DOJ Investigative Division sent you that same complaint on those 2 dates, which are 2 and 1 year ago, respectively.

I had also updated the Sep2010 from US DOJ OIG with "Scan of letter from Lindner to FBI and USMS re CSO Newell assaulting me dated Sep 22 2010.pdf"(attached) where I say a new incident occurred with CSO Newell hitting me on the face with his nameplate; it is dated "Wednesday, September 22, 2010 8:51 PM". In that letter, I write:

"I hereby file my complaint to you about an Assault and Battery and intimidation by (CSO) Court Security Officer Newel in front of the 2nd Circuit Court of Appeals, between 3:30pm and 5:15pm on Friday Aug 20, 2010 on the 3rd floor of 500 Pearl St., while I was reporting a series of mail delayed to the 2nd Circuit. "
[letter to FBI, USMS, and Administrative Office of the US Courts, dated "Wednesday, September 22, 2010 8:51 PM"]

As I understand the FTCA Form 95, it says an FTCA complaint need not be on the Form 95, which is merely a suggested way to log all the necessary information.

I contend that I filed twice for the FTCA, with the DOJ OIG notifying you 2 times, for a total of 4.

Does that mean you are only looking at a certain file (for FTCA claims) rather than any letter from me or from DOJ OIG?

Please call me, as I will call you, to stop this miscarriage of justice.

Regards,

Peter Lindner
nyc10003@nyc.rr.com
peter4apple@nyc.rr.com
1 Irving Place, #G-23-C
NYC, NY 10003
cell: 917-207-4962
home/fax: 212-979-9647

From: [OIG Complaint Response \(OIG\)](#)

Sent: Friday, September 21, 2012 5:40 PM

To: nyc10003@nyc.rr.com

Subject: Complaint Submission

Dear Mr. Lindner,

Thank you for contacting the Department of Justice, Office of the Inspector General. Please see the attached letter in response to your recent complaint submission to our office.

Thank you,

Office of the Inspector General
Investigations Division

****Please do not reply to this e-mail as this address is automated and unattended. If you have any questions please visit our website at www.justice.gov/oig/ for contact information**

Attachment 2: Letter of 9/9/2012 4:22 PM from Lindner to Harwood indicating possibly perjury by USMS GC Auerbach

Attachment was: [document 40] "Filed Declaration.pdf"

From: [Peter Lindner](#)

Sent: Sunday, September 09, 2012 4:22 PM

To: [Christopher \(USANYS\) Harwood](#)

Cc: [Jennie Woltz, Esq](#) ; [Kurt Peterson](#)

Subject: Possible perjury or a simple error in Gerald M. Auerbach sworn declaration of 6/27/2012?

Chris:

If this (attached) declaration is mistaken, would that be a simple clerical error, or would it be perjury?

I wish you to request that the Judge hold off on the Monday, Sep 10, 2012 deadline, or alternately, have you agree to file perjury charges against Gerald M. Auerbach if it turns out he is mistaken.

And we should use that time for me to search the records jointly with Mr. Auerbach, Esq., by telephone conference call, with me and him online at a place of convenience (SDNY Court House after 6pm M-F).

I have proof I filed with DOJ and that they forwarded it to the USMS (US Marshal Service). I wish any action you take regarding my notification of possible perjury by the USMS General Counsel's Office to be taken seriously. I shall forward the proof to USDJ Nathan tomorrow, but I'd rather have us jointly work this out, before we start filing perjury motions.

Please prepare a document making such a request, so that the 3 of us (Littler, USAttorney, me) can sign and get USDJ Nathan's sign off before noon on Monday, Sep 10, 2012, since she originally said no extensions.

Regards,

Peter Lindner
nyc10003@nyc.rr.com
peter4apple@nyc.rr.com
1 Irving Place, #G-23-C
NYC, NY 10003
cell: 917-207-4962
home/fax: 212-979-9647

“18 USC § 1621 - Perjury generally

Whoever—

(1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section [1746](#) of title [28](#), United States Code, willfully subscribes as true any material matter which he does not believe to be true;

is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States.”

<http://www.law.cornell.edu/uscode/text/18/1621>

Attachment 3: Lindner writes CM/ECF Help Desk Sep 12, 2012 about unable to file electronically

From: [Peter Lindner](#)

Sent: Tuesday, September 11, 2012 10:33 PM

To: [CM/ECF](#)

Subject: I can't seem to file my opposition to a motion to dismiss in 11cv8365 Lindner v CSO Newell, et al

Hi:

I'm trying to reply (and also response) to a motion to dismiss, and and I can't do it. I keep getting:

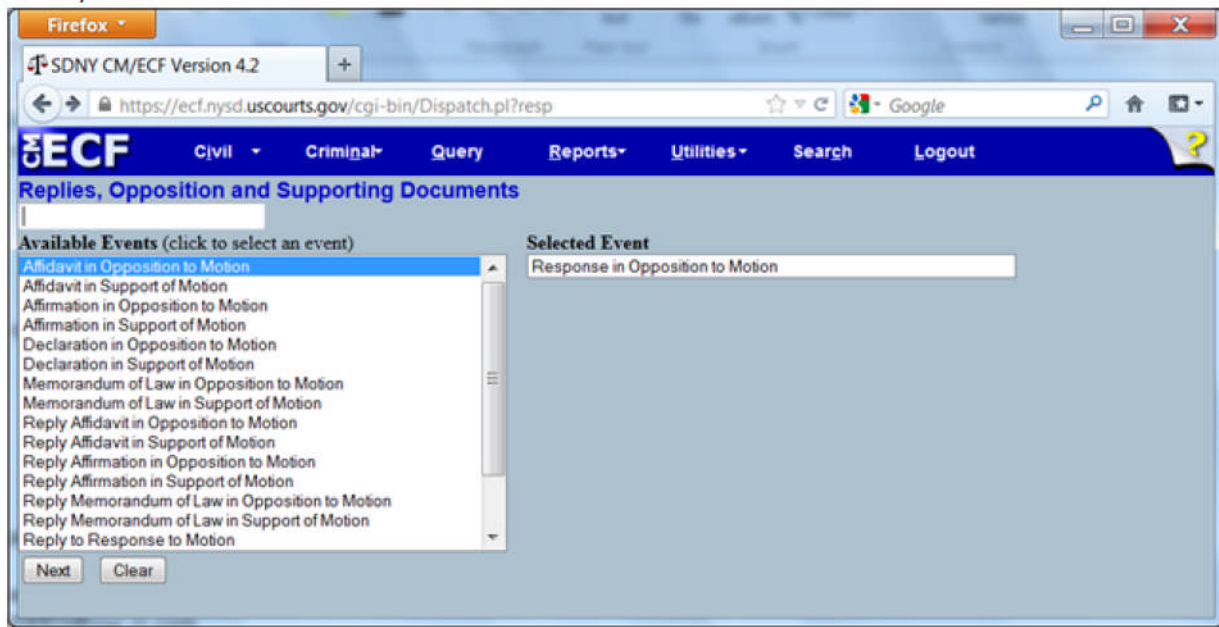
"Replies, Opposition and Supporting Documents

There are no cases in which you are allowed to file."

Do I have to log onto my case to then upload my 3 files (response, affidavit, and memo of law)?

Regards,

Peter Lindner
nyc10003@nyc.rr.com
peter4apple@nyc.rr.com
1 Irving Place, #G-23-C
NYC, NY 10003
cell: 917-207-4962
home/fax: 212-979-9647



Attachment 4: Fax showing handwritten note that Lindner unable to file via CM/ECF

The image below shows

- **typewritten** "Sunday, July 22, 2012 1:16 PM Filed by CM/ECF"
- **hand-written** next to CM/ECF: "* & Fax" with the asterisk referring down at bottom to "trouble filing on CM/ECF – don't have logon id, but have password! /s/ P.L."

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
PETER LINDNER,

Plaintiff
-against-
COURT SECURITY OFFICER (CSO) NEWELL,
CSO MUSCHITIELLO, CSO JOHN DOE #1, CSO
JOHN DOE #2, 2ND CIRCUIT COURT OF
APPEALS CLERK MARGARET LAIN,
ASSISTANT US MARSHAL (USM) JAMES
HOWARD, USM BRIAN MURPHY, USM BETTY
ANN PASCARELLA, WITNESS SECURITY S.
JONES, CONGRESSIONAL AFFAIRS CHIEF D.
DISRUDE, US ATTORNEY PREET BHARARA,
USM JOSEPH R. GUCCIONE,
Defendants

Civil Action No. 11 cv 08365 (AJN-MHD)

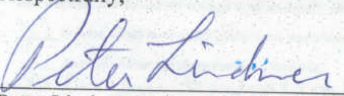
**PLAINTIFF MOTION FOR
POSTPONEMENT UNTIL US DOJ
FINISHES TORT CLAIM PROCESSING**

Sunday, July 22, 2012 1:16 PM
Filed by CM/ECF * & fax

I have received the attached letter from the US Department of Justice dated July 18, 2012 which requests additional information on my claim, with regard to my instituting "a civil action [28 U.S.C. § 2675(a)]".

I note that I intend to file separately an FRCP 11 motion against Littler.

I respectfully request a postponement of my action, so that the law's requirements can be fulfilled, and apologize for my lack of knowledge on this point, and ask the Court's indulgence / forgiveness.

Respectfully,

Peter Lindner, Litigant Pro Se
1 Irving Place, Apt. G-23-C
NYC, NY 10003
Home/fax: 212-979-9647
Cell: 917-207-4962
Email: nyc10003@nyc.rr.com

dated the 22nd day of July 2012

cc:

- Christopher B. Harwood, Assistant US Attorney (AUSA), via email Christopher.Harwood@usdoj.gov
- Ms. Wolz, Esq. of Littler Mendelson, via email jwoltz@littler.com

* trouble filing on CM/ECF - don't have logon id, but have password!
P.L.

1

Attachment 5: Letter to DOJ of Sunday, August 29, 2010 to Tony West, Asst Atty Genl, Civil Division

Sunday, August 29, 2010 1:15 AM

Mr. Tony West, Assistant Attorney General, Civil Division

Dear Mr. West,

A week ago (8/20/2010) I was assaulted by a Court Security Officer on the area in front of the window of the Clerk of the 2nd Circuit Court of Appeals, 3rd Floor, 500 Pearl St., NYC. I found out this week that this person Mr. Newell is **not** a US Marshal, but a contractor. This week (Friday, August 27, 2010), I was told by US Marshal Betty Ann Pascarella that she did review a video tape, but did not see the incident; however US Marshal Pascarella would neither confirm or deny that a tape exists showing me with the two Court Security Officers. She further said that Mr. Newell denies his badge made contact with my face. The Court Security video tape and a deposition from his colleague should confirm my version, and show that Mr. Newell misled a US Marshal (Pascarella).

I am afraid that the Court Security Officer Newell will get away with the assault and battery upon me, and the video tape recording that Court House incident will get "lost."

I appealed a decision of Summary Judgment made by a US District Judge to the 2nd Circuit Court of Appeals. I went to talk to a Clerk (Margaret Lain) about whether **18 USC §1512(b)(3)** was violated, since I was communicating about a possible federal crime to a federal Judge (the 2nd Circuit Judges). While talking to (whom I thought was) a US Marshal about someone messing with my mail to the 2nd Circuit, his colleague hit me in the forehead with his name tag between 3:30pm and 5:15pm on Friday Aug 20, 2010 on the 3rd floor of 500 Pearl St.

I had gone to the 2nd Circuit to see if IBM was making a frivolous motion about denying me an extension of time and denying me IFP (in forma pauperis). I had sent in 3 submissions to the 2nd Circuit, two of which came back to me with SDNY stamps on it or SDNY stationary. I complained to the 13th Precinct and also to the USPS Postal Police. I found out on Aug 20th that on Aug 18, Judge Chin denied my extension to Sep 2010, so I told the 2nd Circuit Clerks that they should call the Police, and they reluctantly called the US Marshal (who I found out 6 days later was a Court Security Officer). I spoke to Court Security Officer Muschitello and some other Court Security Officer came by and said something as a nasty aside, and I said "What did you say?" and he said "None of your business" (words to that effect). I said "What is your name", and he refused to tell me. Since the Court Security Officers (at the time I thought they were both US Marshals) wear a blazer that has a plastic plaque that goes in the breast pocket, I asked Mr. Muschitello if I can pass by that other "Marshal" to see his name tag. That "Marshal" [Court Security Officer] then took the plaque out of his pocket (Court Security Officer Newell) and held it inches in front of my eyes (I wear glasses). And then Court Security Officer Newell bumped the name tag plaque against my face, right side temple near eyes. If I were a woman or old person (I'm 60), that would be incredible, and it was a bit intimidating. I reported it via phone at about 8-9pm on the US Attorney Civilian Criminal Complaint line (I believe on Saturday, Aug 21, 2010). Two separate calls: one for someone attempting to hinder or delay my communications to a federal judge about a possible federal crime, and the 2nd one for being hit in the face by "Marshal" Newell (now actually Court Security Officer Newell).

I will add that he apologized (as I was leaving the 3rd floor office of the 2nd Circuit Clerk, escorted out by Court Security Officer Muschitello) for putting the name tag so close to me. I said You didn't put it close to me, you hit me with it. Will you apologize for that? And he apologized for that and we shook hands. But later a friend said to me that that was a crime, and that he had not heard of a Federal officer doing such an (out of control) thing. That's why I called the US Attorney. Afterwards, I wondered, there must have been a lot of pressure on the "Marshal" (now I understand him to be a Court Security Officer, who is a contractor, but sworn in by the US Marshal) to stop me, and maybe that's why he went ballistic. Is the pressure due to my inquiries about USDJ Sullivan?

I also determined that my mail had been intercepted by the US Marshals, re-routed to the SDNY, and then sent to the 2nd Circuit, since a third marshal looked at my cell phone photos outside the Court House (cell phones are checked at the front entrance), and said the stamp on the envelope was USM.

I think I'm being denied due process in the Court House (by USDJ Sullivan) and abuse of discretion, when I could not depose the named defendants in the IBM case, and my Summary Judgment reply to IBM was filed and USDJ Sullivan wouldn't take it (I had injuries that were told to USDJ Sullivan), and then ruled that since it was not filed, then IBM wins the Summary Judgment. Now the 2nd Circuit has my 3 submissions in wrong order (#3, then #2 and #1), where #1 was the full 40 page motion, and #2 and #3 were the 4 page request for extension.

Something rotten is going on here. I think we need to make a joint call to the NYPD to take down my complaint against USDJ Sullivan's ORDER #130 (Oct2009) and the intimidation / assault by Marshal Newel on Fri Aug 20 2010 at 4:15-5:15pm (I have 4:59pm in my Daytimer). I hope, as my friend pointed out, the US Marshal doesn't "lose" the video tapes. And if Court Security Officer Newel will assault me in front of his colleague and on video tape, what will happen if they get me to an area that is not taped? Will I be killed? Or "accidentally" fall down the stairs?

I'm alleging that USDJ Sullivan's ORDER#130 was a violation of 18 USC 1512(b)(3), which is a criminal act punishable by up to 20 years imprisonment. If USDJ Sullivan is indeed a lawbreaker, and now: corrupt, wouldn't others jump in to protect their corrupt judge as a "get out of jail free" card? [A monopoly game card reference, but in this situation, get out of jail for a fee.] Would felons (corporate, mob) and civil offenders (corporate) cherish USDJ Sullivan, and not want to lose His Honor from the bench?

If the US Marshal's Office stamped a letter and twice gave it to the SDNY instead of the 2nd Circuit, wouldn't it appear that they are violating 18 USC 1512(b)(3) and now also USPS regulations on tampering with the mail? I asked the next pair of Marshals, who took me to their Office (4th Floor): US Marshal James Howard and his subordinate Brian Murphy, about what they would do if someone reported the mail problem, he said "no crime would have been committed," and he would just give a disciplinary note to any Marshal in his employ who had done so. Marshal Howard did say he would fill out a USM11 report on the incident, but said the document has no number or identifying tag on it except the date.

So, maybe we can convince the NYPD 13th Precinct to take down the attempted intimidation by USDJ Sullivan in Oct2009, and the NYPD Precinct covering the 500 Pearl St Courthouse to take down the assault and intimidation complaint. It is 2:41 am, and I have slept since 9pm without sleeping pills after such a tough day. I was in the 2nd Circuit from 3pm to 6pm.

By the way, the 2nd Circuit Clerk Margaret Lain told me last week that I mis-addressed the envelope to 500 Pearl St, when it should go to Foley Square. But in the 3rd floor of 500 Pearl St's 2nd Circuit

Clerk's office, I saw and photocopied a schedule for the day that listed 2nd Circuit at 500 Pearl St. So, that proves my address was correct, or at least not wrong.

Sincerely yours,

Peter W. Lindner
1 Irving Place, #G-23-C
NYC, NY 10003
home/fax: 212-979-9647
cell: 917-207-4962
email: nyc10003@nyc.rr.com

Attachment 6: Scan of Notary Seal & Signature

45) For the above reasons and in the interest of Justice and Due Process (both of which are Constitutional reasons for my suit), I humbly request that the parties, Mr. Auerbach shall be present via encrypted videoconference call, which I am fairly sure the DOJ has.

Sworn and notarized

By: Peter Lindner ^{6:43pm} Dated: New York, NY on 24th, September __, 2012

Peter W. Lindner
Plaintiff, *Pro Se*
1 Irving Place, Apt. G-23-C
New York, New York 10003
Home/ Fax: 212-979-9647
Cell: 917-207-4962
Email: nyc10003@nyc.rr.com

Sworn to before me

This 24th Day of September, 2012

Notary Public
NYC, NY

JONATHAN A. HENRY
Notary Public, State of New York
No. 01HE6260711
Qualified in New York County
Commission Expires April 30, 2016

Note the blue ink

Note the ink of the
Notary's stamp

Note the
embossed Notary
Public seal